



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No. 221026-0226]**

**RIN 0648-BL75**

### **Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 23 to the Mackerel, Squid, and Butterfish Fishery Management Plan. Amendment 23 was developed by the Mid-Atlantic Fishery Management Council to establish a revised Atlantic mackerel rebuilding plan, set the 2023 Atlantic mackerel specifications and a river herring and shad catch cap for the Atlantic mackerel fishery, establish a recreational possession limit, and modify in-season closure measures. This action is necessary to prevent overfishing and rebuild the Atlantic mackerel stock based on a 2021 management track assessment that found the Atlantic mackerel stock remains overfished and subject to overfishing. The intended effect of this rule is to sustainably manage the Atlantic mackerel fishery and achieve optimum yield on a continuing basis.

**DATES:** Public comments must be received by *[insert date 60 days after the date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2022-0098, by the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter **NOAA-NMFS-2022-0098** in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The Mid-Atlantic Fishery Management Council prepared a draft environmental assessment (EA) for Amendment 23 that describes the proposed action and other alternatives considered and provides a thorough analysis of the impacts of the proposed action and alternatives considered. Copies of Amendment 23, including the draft EA and the preliminary Regulatory Impact Review, and the Regulatory Flexibility Act analysis, are available from: Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 State Street, Dover, DE 19901. The EA and associated analysis is accessible via the Internet at <https://www.mafmc.org/s/Mack-Rebuild-2-2022-08-19-sub.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, Fishery Policy Analyst, (978) 281-9150.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Atlantic mackerel fishery is managed under the Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) through an annual quota, possession limits, and a catch cap for bycatch of river herring and shad. In-season accountability measures (AM), including closures of the fishery through possession limit reductions, help ensure catch does not exceed the Atlantic mackerel annual catch limit (ACL) or the river herring and shad catch cap. Reactive AMs require a pound-for-pound payback the following year if landings exceed the Atlantic mackerel ACL.

Current regulations require the Council's Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations based upon the acceptable biological catch (ABC) advice of the Council's Scientific and Statistical Committee (SSC). Specifications are the combined suite of commercial and recreational catch levels and management measures necessary to prevent such catch levels from being exceeded. As part of this process, the Council sets the ACL, domestic annual harvest (DAH), domestic annual processing, total allowable level of foreign fishing, joint venture processing, and commercial and recreational annual catch targets (ACT) for up to three years. These specifications are reviewed annually, and may be revised by the Council based on updated information.

Atlantic mackerel recruitment has been declining since 1999 and has been below the long-term average since 2009. On November 29, 2019 (84 FR 58053), as requested by the Council, NMFS implemented a 5-year Atlantic mackerel rebuilding plan. A July 2021 Atlantic mackerel management track assessment concluded that the Atlantic mackerel stock remained overfished and subject to overfishing. This management track assessment also determined that due to previous assumptions about potential recruitment that did not come to fruition, the original rebuilding no longer provided a realistic rebuilding approach. Stock biomass is estimated to have nearly tripled in size from 2014 to 2019 (from approximately 8 percent to 24 percent of rebuilt), but full rebuilding on the original

schedule, by 2023, now appears impossible. The stock is expected to be less than half rebuilt by 2023. The final assessment summary report is available on the Northeast Fisheries Science Center (NEFSC) website ([www.nefsc.noaa.gov/saw/reports.html](http://www.nefsc.noaa.gov/saw/reports.html)).

In response to the 2021 Atlantic mackerel management track assessment, the SSC recommended that measures be implemented to eliminate or minimize additional catch to reduce the potential biological impacts of catch levels while the Council developed a revised Atlantic mackerel rebuilding plan. On January 12, 2022 (87 FR 1700), NMFS published an interim rule that reduced the 2022 DAH of Atlantic mackerel from 17,312 mt to 4,963 mt in order to limit U.S. commercial catch to approximately the levels realized during 2021. These interim measures were extended on July 6, 2022 (87 FR 40139), to remain effective for the entire 2022 Atlantic mackerel fishing year and will expire on January 13, 2023.

In response to the 2021 Atlantic mackerel management track assessment, the Council developed Amendment 23 to revise the Atlantic mackerel rebuilding plan that would prevent overfishing and rebuild the stock, as required by section 303 of the Magnuson-Stevens Fishery Conservation and Management Act. At its June 2022 meeting, the Council recommended to establish a 10-year Atlantic mackerel rebuilding plan and the 2023 Atlantic mackerel specifications through Amendment 23. On August 19, 2022, the Council submitted the amendment and draft EA to NMFS for preliminary review. The Council reviewed the proposed regulations in this rule, as drafted by NMFS, and deemed them to be necessary and appropriate, as specified in section 303(c) of the Magnuson-Stevens Act. This action also includes 2023 Atlantic mackerel specifications based on the proposed rebuilding plan including a modified fishery closure approach, a status quo river herring and shad catch cap, and a new recreational possession limit, as described further below.

### **Proposed Measures**

Under the Magnuson-Stevens Act, NMFS is required to publish proposed rules for public comment after preliminarily determining whether they are consistent with applicable law. When a Council approves and then transmits a fishery management plan or amendment to NMFS, a notice of availability announcing a 60-day comment period is published in the **Federal Register** (87 FR 64430). Within 30 days of the end of the comment period, NMFS must approve, disapprove, or partially approve the plan or amendment based on consistency with law. We are seeking comments on the Council's proposed measures in Amendment 23, as described below, and whether they are consistent with the Mackerel, Squid, and Butterfish FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

1. *Atlantic mackerel rebuilding plan.*

For stocks that are overfished, section 304(e)(4) the Magnuson-Stevens Act requires that a rebuilding program shall be as short as possible, taking into account the status and biology of any overfished stocks, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem. The Magnuson-Stevens Act also requires the Council to develop measures for a rebuilding plan as soon as possible and the rebuilding plan must rebuild the stock within 10 years. In this action, the Council considered five rebuilding alternatives that made a variety of recruitment assumptions and used different fishing mortality rates as risk buffers that resulted in a range of probability (52 percent to 62 percent) of the stock being rebuilt in 10 years. The Council proposed an alternative that assumes that recruitment starts low (similar to recruitment from 2009 to present) and then increases toward long-term typical recruitment as the stock rebuilds. This alternative also assumes a fishing mortality rate of 0.12, which is predicted to have a 61 percent probability of rebuilding the Atlantic mackerel stock in 10 years. This proposed action sets the overall rebuilding plan and the 2023 ABC specified in Table 1. The other

ABCs provided in Table 1 are projections that will be revisited during future specification setting. A new stock assessment in 2023 will inform the quotas set beyond 2023.

**Table 1 – Projected Atlantic mackerel ABC and stock biomass for proposed rebuilding alternative.**

	Catch (mt)	Biomass (mt)
2023	8,094	80,745
2024	9,274	91,738
2025	10,540	103,756
2026	11,906	116,857
2027	13,408	131,291
2028	15,004	146,553
2029	16,631	162,239
2030	18,261	177,731
2031	19,814	192,045
2032	21,215	204,796

While less or zero catch would rebuild the Atlantic mackerel stock faster, the Council recommended the rebuilding plan alternative that was as short a time as possible given the stock's status, biology, needs of fishing communities, and the interaction of the stock within the marine ecosystem. This proposed rebuilding alternative and associated 2023 ABC would set a quota 41-percent less than the 2019-2021 average landings of 6,187 mt with an associated \$3.62 million average ex-vessel revenue. However, given the relatively few vessels participating in the Atlantic mackerel fishery in recent years, the relatively low landings, and the small reduction in quota from recent landings, the impacts would be slightly negative in the short term. However, from a long-term perspective, a rebuilt Atlantic mackerel stock could return about \$7.1 million annually to the Atlantic mackerel fishery.

## *2. Atlantic mackerel specifications.*

Based on the Council's recommendation, NMFS published an interim rule (87 FR 1700 (January 12, 2022) and 87 FR 40139 (July 6, 2022)) that implemented revised 2022 Atlantic mackerel specifications which will expire on January 13, 2023. This interim rule intended to minimize additional 2022 catch to reduce the potential biological impacts of

catch levels while the Council developed this rebuilding plan. The original Atlantic 2022 mackerel specifications were established in 2021 under the original rebuilding plan (86 FR 38586; July 22, 2021), and these much higher specifications would roll over into 2023 after expiration of the interim rule if Amendment 23 is not approved. If approved, Amendment 23 would replace those 2022 roll-over specifications that were previously set in 2021.

Table 2 presents the proposed 2023 Atlantic mackerel specifications. The proposed 2023 commercial quota would be a 27-percent decrease from the interim 2022 commercial quota and a 79-percent decrease from the original 2022 commercial quota set in 2021, which would become effective after the interim rule expires on January 13, 2023, if final Amendment 23 measures are not in place.

**Table 2 – Proposed 2023 Atlantic mackerel specifications.**

<b>ABC/ACL</b>	<b>8,094</b>	<b>a</b>
Canadian Catch Deduction	2,197	b
Rec Catch Deduction	2,143	c
Commercial Discards	115	d
Commercial Quota	3,639	e=a-b-c-d
Before May 1 First Closure Threshold (-886 mt)	2,753	f=e-886
May1/after First Closure Threshold (-443 mt)	3,196	g=e-443
Final Closure Threshold (-100 mt)	3,539	h=e-100

The Canadian catch deduction is based on recent Canadian landings. The 2021 Canadian landings were 4,395 mt. Canada closed its directed Atlantic mackerel fishery for 2022 and therefore may have minimal landings in 2022. The Council decided to deduct 2,197 mt from the 2023 ABC, which represents half of the 2021 Canadian landings. The 2,143-mt recreational deduction is the 2019-2021 average recreational catch minus 17 percent to account for an expected reduction in recreational catch due to the proposed recreational possession limit. The 115-mt commercial discard deduction is based on the average discard rate from 2017-2019. There have been no ABC overages in the mackerel fishery, so it was determined that a management uncertainty buffer is not necessary at this

time, and the modified inseason closure measures below are expected to effectively manage catch and prevent overages.

### *3. In-season closure provisions.*

To address the lower quota available to the U.S. commercial Atlantic mackerel fishery, this action proposes a modified closure approach. This modified approach proposes an initial directed fishery closure that is dependent on the time of year, and a final directed fishery closure that would happen sequentially after an initial closure. An initial directed fishery closure would occur before May 1, once 886 mt of the commercial quota is remaining, or on or after May 1, once 443 mt of the commercial quota is remaining. Only one initial closures would occur within a fishing year. If either of these closures of the directed mackerel fishery are triggered, the following trip limits would be implemented: 40,000 lb (18.14 mt) for Tier 1, 2, or 3 limited access permits; and 5,000 lb (2.27 mt) for incidental/open access permits.

This action also proposes a final closure threshold when 100 mt of the commercial quota is remaining at any point during the fishery year following the initial closure thresholds. Once a final closure is triggered, all commercial permits would be limited to a 5,000-lb (2.27-mt) trip limit to minimize any potential quota overages. Finally, this action proposes that NMFS would have the discretion not to close the fishery in November and December if performance suggests that a quota overage is unlikely, which applies to any type of Atlantic mackerel closure. This final measure is intended to increase the likelihood that optimum yield can be harvested, while still minimizing the likelihood of and overage by limiting this authority to November and December at the end of the fishing year.

### *4. Recreational possession limit.*

Because of the low Atlantic mackerel ABCs needed, at least at the beginning of the rebuilding period, a recreational possession limit was deemed necessary to ensure



recreational catch is reduced to commensurate with the reduction in the commercial quota. The Council considered alternatives of 10-, 15-, and 20-fish per person recreational possession limits. This action proposes the 20-fish per person Atlantic mackerel possession limit. The Council preferred this alternative to support ongoing rebuilding, while recognizing that smaller possession limits could cause substantial economic impact that would ripple through tuna and other fisheries that have not dealt with a mackerel possession limit to date. A 20-fish limit marks a meaningful first step in managing the recreational mackerel fishery for 2023 and can be revised in a future specifications action. This proposed recreational possession limit would reduce recreational catch by 17 percent compared to average 2019-2021 recreational catch which is expected to assisting achieving a rebuilt stock.

The Council has been working closely with the states of Maine, New Hampshire, and Massachusetts, as the majority of recreational Atlantic mackerel catch occurs in these state waters (there has been minimal recreational mackerel catch south of Massachusetts in recent years). The Council has coordinated with the aforementioned states in the development of these recreational measures, and it appears likely that these states will mirror this proposed Federal recreational possession limit. This coordination is needed in order to achieve the reduction in catch necessary.

##### *5. River herring and shad catch cap.*

In 2014, Amendment 14 to the FMP (February 24, 2014; 79 FR 10029) implemented a catch cap to manage the bycatch of river herring and shad in the Atlantic mackerel fishery. Once this cap is reached in a given fishing year, Atlantic mackerel commercial possession limits are reduced to 20,000 lb (9.08 mt) for the rest of the year. The catch caps are monitored based on river herring and shad bycatch recorded in observer and portside sampling data for mackerel trips by limited access vessels, or trips in which at least 20,000 lb (9.08 mt) of Atlantic mackerel are landed.

The Council considered three alternatives for the river herring and shad catch cap including 129 mt (status quo), 89 mt (median river herring and shad catch 2005-2012), and a cap amount that would scale with the Atlantic mackerel commercial quota. To continue to manage river herring and shad catch in the Atlantic mackerel fishery, this action proposes a status quo catch cap of 129 mt. This alternative was preferred because lower caps may be impracticable to monitor, and the small scale of the Atlantic mackerel fishery at current quotas should lead to small incidental catch of river herring and shad regardless of the catch cap amount.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Amendment 23 to the Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making a final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed action, if adopted, would not have a significant economic impact on a substantial number of small entities. More information on this determination is provided below.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an environmental assessment. This proposed action would affect all vessels that hold any for-hire or commercial permits for Atlantic mackerel. Some small entities own multiple vessels with Atlantic mackerel permits.

*For-Hire*

In 2021, there were 630 vessels with for-hire permits allowing catch of Atlantic mackerel in Federal waters; 315 had revenues that classified them as for-hire operations. These 315 permits were owned by 265 entities, all of which qualified as small businesses under current SBA definitions (under \$7.5 million to be a for-hire fishing small business entity). The preferred rebuilding plan and recreational possession limit were chosen considering the impacts on fishing businesses, and the Council chose the 20-fish possession limit specifically to limit impacts on recreational fishing including for-hire fishing. The anticipated 17-percent catch reduction expected with this proposed possession limit should not have a significant adverse impact on a substantial number of small entities to its limited impact.

#### *Commercial*

In 2021, there were 1,535 vessels with commercial Atlantic mackerel permits allowing catch of mackerel in Federal waters. Of those vessels, 1,433 vessels were listed as commercial fishing operations or had no revenue in 2021. These 1,433 vessels were owned by 1,037 entities, 1,026 of which qualified as small businesses under current SBA definitions (under \$11 million to be a commercial fishing small business entity).

Overall, the 1,026 relevant small commercial entities derived 0.2-0.3 percent of their revenues from Atlantic mackerel 2019-2022 (annual totals). The proposed rebuilding plan would reduce the quota compared to 2019-2021 landings, to some degree for a few years, before potentially increasing beyond 2019-2021 landings. As a result, this action would have some short-term impacts on these entities, but because Atlantic mackerel make up such a small proportion of revenues the proposed action should not have a significant adverse impact on a substantial number of small entities. Also, only 12 individual entities had total 2019-2021 Atlantic mackerel revenues that represented at least 5 percent of total revenues. Rebuilding Atlantic mackerel to a more productive stock size should also help these entities in the long run.

This action would slightly reduce catch compared to 2019-2021 landings (but would set a quota similar to expected 2022 catch), with the goal of creating a more productive stock. The reduction of catch in combination with the evidence that Atlantic mackerel is a small proportion of total revenues, provides the conclusion that this rule affects a substantial number of small entities, but is not expected to have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new information collection requirements, including reporting or recordkeeping requirements, contained in this action.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 26, 2022.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

#### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.14, revise paragraph (g)(1)(ii) and add paragraph (g)(1)(iii), and revise paragraph (g)(4) to read as follows:

#### **§648.14 Prohibitions.**

\* \* \* \* \*

(g)\*\*\*

(1) \* \* \*

(ii) *Recreational possession.* Take and retain, possess, or land Atlantic mackerel in excess of the recreational limits contained in §648.26(a)(3).

(iii) *Transfer and purchase.*

(A) Purchase or otherwise receive for a commercial purpose; other than solely for transport on land; Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish caught by a vessel that has not been issued a Federal Atlantic mackerel, *Illex* squid, longfin squid, or butterfish vessel permit, unless the vessel fishes exclusively in state waters.

(B) Transfer longfin squid, *Illex* squid, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued the appropriate LOA from the Regional Administrator along with a valid longfin squid, butterfish, or *Illex* squid moratorium permit and are transferring species for which the vessels are permitted, or a valid squid/butterfish incidental catch permit.

\* \* \* \* \*

(4) *Presumption.* For purposes of this part, the following presumption applies: All Atlantic chub mackerel, Atlantic mackerel, *Illex* squid, longfin squid, or butterfish possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such species were purchased for bait or harvested by a vessel fishing exclusively in state waters or, for Atlantic chub mackerel, outside of the Atlantic Chub Mackerel Management Unit.

\* \* \* \* \*

3. In § 648.21, revise paragraph (c)(2) to read as follows:

**§ 648.21 Mid-Atlantic Fishery Management Council risk policy.**

\* \* \* \* \*

(c) \* \* \*

(2) The SSC may specify higher 2023-2032 ABCs for Atlantic mackerel based on  $F_{\text{REBUILD}}$  instead of the methods outlined in paragraph (a) of this section to implement a rebuilding program that would rebuild this stock by 2032.

\* \* \* \* \*

4. In § 648.24, revise paragraphs (b)(1)(i) through (iii) to read as follows:

**§ 648.24 Fishery closures and accountability measures.**

\* \* \* \* \*

(b) \*\*\*

(1) \*\*\*

(i) *First phase commercial closure.*

(A) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects before May 1 that 886 mt of the Atlantic mackerel DAH is remaining. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed, as specified in § 648.26.

(B) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects on or after May 1 that 443 mt of the Atlantic mackerel DAH is remaining. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental

catches allowed, as specified in § 648.26.

(C) Unless previously closed pursuant to paragraph (b)(1)(i)(A) or (b)(1)(i)(B) of this section, NMFS will close the Tier 3 commercial Atlantic mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 Atlantic mackerel landings cap will be harvested. Unless otherwise restricted, the closure of the Tier 3 commercial Atlantic mackerel fishery will be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.26.

(ii) *Second phase commercial quota closure.* When the Regional Administrator projects that 100 mt of the Atlantic mackerel DAH is remaining, NMFS will reduce the possession of Atlantic mackerel in the EEZ applicable to all commercial Atlantic mackerel permits for the remainder of the fishing year as specified in § 648.26(a)(2)(iii)(A).

(iii) NMFS has the discretion to not implement measures outlined in paragraphs (b)(1)(i)(B) or (b)(1)(ii) of this section during November and December if the Regional Administrator projects that commercial Atlantic mackerel landings will not exceed the DAH during the remainder of the fishing year.

\* \* \* \* \*

5. In § 648.26, revise paragraph (a)(1)(i) introductory text, paragraphs (a)(1)(i) through (iv), and paragraph (a)(2), and add paragraph (a)(3) to read as follows:

**§ 648.26 Mackerel, squid, and butterfish possession restrictions.**

(a) \*\*\* -

(1) *Initial commercial possession limits.* A vessel must be issued a valid limited access Atlantic mackerel permit to fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel in or harvested from the EEZ per trip, provided the fishery has not been closed as specified in § 648.24(b)(1).

(i) A vessel issued a Tier 1 limited access mackerel permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in or harvested from the

EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(ii) A vessel issued a Tier 2 limited access mackerel permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(iii) A vessel issued a Tier 3 limited access mackerel permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, or 90 percent of the Tier 3 landings cap has been harvested, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

(iv) A vessel issued an open access Atlantic mackerel permit may fish for, possess, or land up to 20,000 lb (9.08 mt) of Atlantic mackerel in or harvested from the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because of a first phase or second phase commercial fishery closure, as specified in § 648.24(b)(1)(i) or § 648.24(b)(1)(ii).

\* \* \* \* \*

(2) *Atlantic mackerel closure possession restrictions.* Any Atlantic mackerel possession restrictions implemented under paragraph (a)(2) of this section will remain in



place for the rest of the fishing year, unless further restricted by a subsequent action. If the entire commercial Atlantic mackerel fishery is closed due to harvesting the river herring/shad catch cap, as specified in § 648.24(b)(6) before a first phase or second phase commercial fishery closure, then the Atlantic mackerel possession restrictions specified in § 648.26(a)(2)(iii)(B) shall remain in place for the rest of the fishing year unless further reduced by the possession restrictions specified in § 648.26(a)(2)(iii)(A).

(i) *Limited Access Fishery.*

(A) During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i), when 886 mt of the DAH is remaining before May 1 or when 443 mt of the DAH is remaining on or after May 1, vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 40,000 lb (18.14 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) During a closure of the Tier 3 commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i)(C), when 90 percent of the Tier 3 landings cap is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land more than 40,000 lb (18.14 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(ii) *Open Access Fishery.* During a closure of the Atlantic mackerel commercial sector pursuant to § 648.24(b)(1)(i), when 886 mt of the DAH is remaining before May or when 443 mt of the DAH is remaining on or after May 1, vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours

and ending at 2400 hours.

(iii) *Entire commercial fishery.*

(A) *Commercial quota closure.* During a closure of the entire commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(ii), when 100 mt of the DAH is remaining, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) *River herring/shad catch cap closure.* During a closure of the limited access commercial Atlantic mackerel fishery pursuant to § 648.24(b)(6), when 95 percent of the river herring/shad catch cap has been harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(3) *Recreational possession limits.* The recreational Atlantic mackerel possession limit for charter/party and private recreational anglers is 20 Atlantic mackerel per person per trip, including for-hire crew.

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